COOPERATIVE AGREEMENT
BETWEEN
THE GRAND PORTAGE BAND OF CHIPPEWA
AND
THE MINNESOTA POLLUTION CONTROL AGENCY

JULY 16, 1996

APPROVED BY THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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PREAMBLE

WHEREAS, The Grand Portage Band of Chippewa ("Grand Portage Band" or "Band") is a sovereign Indian nation, and a federally recognized Indian Tribe pursuant to 25 U.S.C. § 476, the Indian Reorganization Act; and

WHEREAS, On March 1, 1994, the Band applied to the United States Environmental Protection Agency ("EPA") for treatment as a state under section 518 of the Federal Water Pollution Control Act ("the Act"), 33 U.S.C. § 1377(e), for purposes of the Water Quality Standards Program, section 303 of the Act, and for purposes of the Certification Program, section 401 of the Act; and

WHEREAS, On April 14, 1994, the State of Minnesota ("State"), through its Commissioner of the Minnesota Pollution Control Agency ("MPCA"), submitted comments to the EPA on the Band's application, recognizing for purposes of the Act the Band's jurisdiction over waters of the Grand Portage Reservation excepting those waters described in the Band's application along the shoreline of Lake Superior; and

WHEREAS, On May 6, 1994, the Band submitted a response to the MPCA's comments noting that the portions of Lake Superior described in the Band's application were historically and are currently viewed by the Band as part of its Reservation; and

WHEREAS, The MPCA and the Band have a common interest and desire to protect the quality of the waters along the shoreline of Lake Superior and desire to enter into a cooperative agreement to jointly plan and administer the requirements of the Act's Water Quality Standards Program and Certification Program in the waters described in Part I.A. of this Cooperative Agreement; and

WHEREAS, Section 518(d) of the Act specifically provides that Indian tribes and states can enter into cooperative agreements in order to ensure the consistent implementation of the requirements of the Act. 33 U.S.C. § 1377(d).

NOW, THEREFORE, the Grand Portage Band of Chippewa and the State of Minnesota, acting through its Minnesota Pollution Control Agency ("the parties"), enter into this Cooperative Agreement and agree as follows:

I. PURPOSES OF THE COOPERATIVE AGREEMENT

The purposes of this Cooperative Agreement are to:

A. Establish a process by which the Band and the MPCA will work together cooperatively to plan and administer independently adopted water quality standards and certification programs under the Act for the portion of Lake Superior described as follows:

> That part of Lake Superior described as follows: beginning at the intersection of the west line of Range 5 East and the shoreline of Lake Superior, thence to a point in Lake Superior one half mile south as measured along the southerly extension of the west line of Range 5 East, thence northeasterly to a point on the Minnesota-Michigan boundary line at latitude 47 degrees, 58 minutes, 40 seconds, thence northerly along the Minnesota-Michigan boundary line to the point which forms the common boundary between Minnesota, Michigan and the Province of Ontario, Canada, and thence westerly along the International Boundary line to the confluence of the Pigeon River.

(hereinafter "Shoreline Waters"); and

B. Develop procedures for joint implementation of Band and MPCA water quality standards and certification programs in the Shoreline Waters.

C. Preserve the issue of jurisdiction over the Shoreline Waters so that neither the Band nor the State is conceding any claim to jurisdiction over those waters by entering this Cooperative Agreement.

II. GUIDING PRINCIPLES

The MPCA and the Band have a common interest in maintaining and restoring the chemical, physical and biological integrity of the Shoreline Waters. In order to accomplish that goal, the MPCA and the Band agree to the following principles:

A. The MPCA and the Band will work together as partners in a spirit of trust, openness, and cooperation and with respect for each other's roles.

B. The MPCA and the Band will maintain scheduled communications with the appropriate persons for both the Band and the MPCA.

C. The MPCA and the Band will ensure that their staffs at all levels are aware of and held accountable for realizing these agreed-upon principles.

D. The Band and the MPCA will respect one another's claims to jurisdiction over the Shoreline Waters, and operate under this Agreement in accordance with that mutual respect.

III. EXCHANGE OF INFORMATION AND COMMUNICATION

A. The MPCA and the Band agree to provide, in a timely manner and when requested, information and data necessary to implement this Cooperative Agreement. Such information may include, but not be limited to, the following:

1. information relating to research, investigations, training, and water quality surveillance systems and reports undertaken pursuant to 33 U.S.C. § 1254;
2. information relating to water quality standards and implementation plans developed pursuant to 33 U.S.C. § 1313; and
3. information relating to certification of permits and licenses issued pursuant to 33 U.S.C. § 1341.

The MPCA will respond to information requests in accordance with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13.

B. The MPCA's designated staff person to coordinate communication with the Band is Duane Anderson. The Band's designated staff person to coordinate communication with the MPCA is Kris Carre. The parties may change their designated staff persons by written notice to the other party.

IV. JOINT IMPLEMENTATION AND ENFORCEMENT OF THE FEDERAL WATER POLLUTION CONTROL ACT

A. *Research, investigations, training and information.* The Band and the MPCA agree to cooperate in the implementation of 33 U.S.C. § 1254 under which the EPA Administrator works with states and tribes to conduct research on "the causes, effects, extent, prevention, reduction, and elimination of pollution" in the nation's waterways. Both the Band and the MPCA agree to work with the EPA on research conducted pursuant to this section of the Act.

B. *Water quality standards and implementation plans*

1. The Band and the MPCA will each establish water quality standards for the Shoreline Waters which will be submitted to and reviewed by the EPA pursuant to 33 U.S.C. § 1313 and regulations adopted thereunder.

a. In the portion of the Shoreline Waters described below, the Band will propose water quality standards that prohibit any new or expanded discharge of a pollutant from any point or non-point source, and the MPCA staff will propose, at the next Minn. Rule ch. 7050 rulemaking, water quality standards classifying such water as an Outstanding Resource Value Water (ORVW - Prohibited) pursuant to Minn. R. 7050.0180, subp. 6.A. These water quality standards will apply in the water described as follows:

> That portion of the Shoreline Waters north of latitude 47 degrees, 57 minutes, 13 seconds and east of Hat Point.

b. In all other portions of the Shoreline Waters, the Band will propose water quality standards that prohibit any new or expanded discharge of a pollutant from any point or non-point source unless there is not a prudent and feasible alternative to the discharge, and the MPCA staff will propose to retain in such water the current MPCA classification as an Outstanding Resource Value Water (ORVW-Restricted Discharges) pursuant to Minn. R. 7050.0180, subp. 6.A. The MPCA and the Band agree that once adopted, these standards shall remain unchanged unless modified in accordance with substantive and procedural requirements of statutes and rules.

c. For purposes of Part IV.B.1., the Band will use definitions at least as inclusive as those in 33 U.S.C. § 1362, and the Band will define non-point source to mean any source that is not a point source.

2. Until the MPCA revises its water quality standards, the MPCA will make any § 401 certifications in the Shoreline Waters using the current MPCA water quality standards and other applicable state law.

3. The Band and the MPCA will each hold public hearings to review their standards for the Shoreline Waters and to modify them as appropriate in accordance with the procedures and timeline required in 33 U.S.C. § 1313 and regulations adopted thereunder. To the extent that the proposed standards are consistent with the level of protection contemplated in this Agreement, the Band and the MPCA will support each other in their public hearings. In any event, the Band and the MPCA will be allowed to participate in each other's public hearings as any member of the public would.

4. The Band and the MPCA agree that they will cooperate with each other in the implementation of each of the parties' standards, and will comply with the requirements of the Act and regulations adopted thereunder regarding the issuance of National Pollution Discharge Elimination System permits and water quality standard variances.

C. *Certification.* The Band and the MPCA agree to implement certification of permits and licenses for the Shoreline Waters pursuant to 33 U.S.C. § 1341. Neither the Band nor the MPCA will certify a discharge that would violate their individual water quality standards. The Band and the MPCA agree to consult with each other prior to issuance, denial, or waiver of any certification. The Band and the MPCA agree that any applicant for a federal permit or license for discharge to the Shoreline Waters must obtain a certification from both the Band and the MPCA. The MPCA and the Band agree to inform applicants for § 401 certifications that they need § 401 certifications from both the MPCA and the Band.

D. *Enforcement.* Each party shall notify the other and EPA if it believes that a violation of either party's water quality standards has occurred in the Shoreline Waters. The Band and the MPCA agree to consult with each other prior to taking any enforcement action. A single party may take enforcement action through its own administrative and judicial system. The parties may refer the matter to EPA for enforcement.

V. DISPUTE RESOLUTION

A. *Dispute Resolution Under 40 C.F.R. § 131.7.* If a dispute arises between the MPCA and the Band because of differing water quality standards that result in unreasonable

consequences, the MPCA and the Band shall first make a good faith attempt to resolve the dispute through discussions between the parties. If the dispute cannot be resolved through discussions, either party may request EPA to assist in resolving the dispute using the procedures in 40 C.F.R. § 131.7. EPA agrees to consult with MPCA and the Band prior to including other entities as parties to the dispute pursuant to 40 C.F.R. § 131.7(g)(2).

B. *Other Disputes Under the Agreement.* If a dispute arises between the MPCA and the Band under this Agreement that involves matters not covered by Part V.A., the MPCA and the Band shall first make a good faith attempt to resolve the dispute through discussions between the parties. If the dispute cannot be resolved through discussions, either party may request EPA to assist in resolving the dispute through mediation as described below.

1. EPA shall appoint a neutral mediator who may be an EPA employee, an employee of another federal agency, or other individual with appropriate qualifications. EPA shall select as a mediator a person who is knowledgeable concerning the requirements of the water quality standards program.

2. The mediator shall act as a neutral facilitator whose function is to encourage communication and negotiation between the parties.

3. The mediator may establish an advisory panel, consisting in part of representatives from the affected parties, to study the problem and recommend appropriate solutions.

4. The mediator shall establish the procedures and schedules for mediation of disputes in consultation with the parties.

5. The mediator may consult with EPA's Office of Regional or General Counsel on legal issues, but otherwise shall have no ex parte communication pertaining to the dispute.

6. The mediator may recommend to the parties a means of resolving the dispute, but the recommendation shall not be binding unless the parties so agree.

VI. SOVEREIGN IMMUNITY AND JURISDICTION

A. *Sovereign Immunity.* Nothing in this Cooperative Agreement is or shall be construed to be a waiver of the sovereign immunity of the Grand Portage Band of Chippewa or the State of Minnesota, and the Grand Portage Band of Chippewa and the State of Minnesota hereby expressly retain their sovereign immunity from suit.

B. *Jurisdiction.* Nothing in this Agreement shall preclude the parties from raising objections to the assertion of jurisdiction over the Shoreline Waters by the other party if this Cooperative Agreement is terminated. Nothing in this agreement shall be construed to limit any jurisdiction or authority of the EPA under the Act.

VII. EFFECTIVE DATE OF THE AGREEMENT AND AMENDMENT

This Cooperative Agreement shall be effective upon its signature by the Grand Portage Band and the MPCA and approval by EPA. The Cooperative Agreement may be amended by written agreement of the parties and approval of EPA.

VIII. TERMINATION OF AGREEMENT

This Agreement may be terminated by either the Band or the MPCA after thirty (30) day notice given in writing to the other party and EPA. Prior to such notice and at the request of either party, the parties agree to discuss issues related to termination. A party's decision to terminate is not subject to the mediation provisions of Part V.A. After termination of this Agreement, the MPCA or the Band may request EPA to recognize its exclusive authority over the Shoreline Waters or parts thereof in accordance with EPA's water quality standards program approval procedures.

IX. EPA APPROVAL

EPA's approval of this Agreement is an approval for the cooperative implementation by the Band and the MPCA of the federal water quality standards program for the Shoreline Waters. EPA agrees not to make a determination that either the Band or the MPCA has exclusive authority to implement the water quality standards program in the Shoreline Waters while this Cooperative Agreement is in effect nor before the Band and the MPCA have been given a

reasonable opportunity to submit comments to EPA with regard to jurisdiction over the Shoreline Waters.

SIGNED:

GRAND PORTAGE BAND OF CHIPPEWA

By: Norman W. Deschampe
Norman Deschampe, Chair
Reservation Tribal Council

Date: July-16-96

STATE OF MINNESOTA through its Commissioner of the MINNESOT POLLUTION CONTROL AGENCY

By: Peder T. [illegible]
Peder Larson
Acting Commissioner

Date: July 16, 19[illegible]

APPROVED:

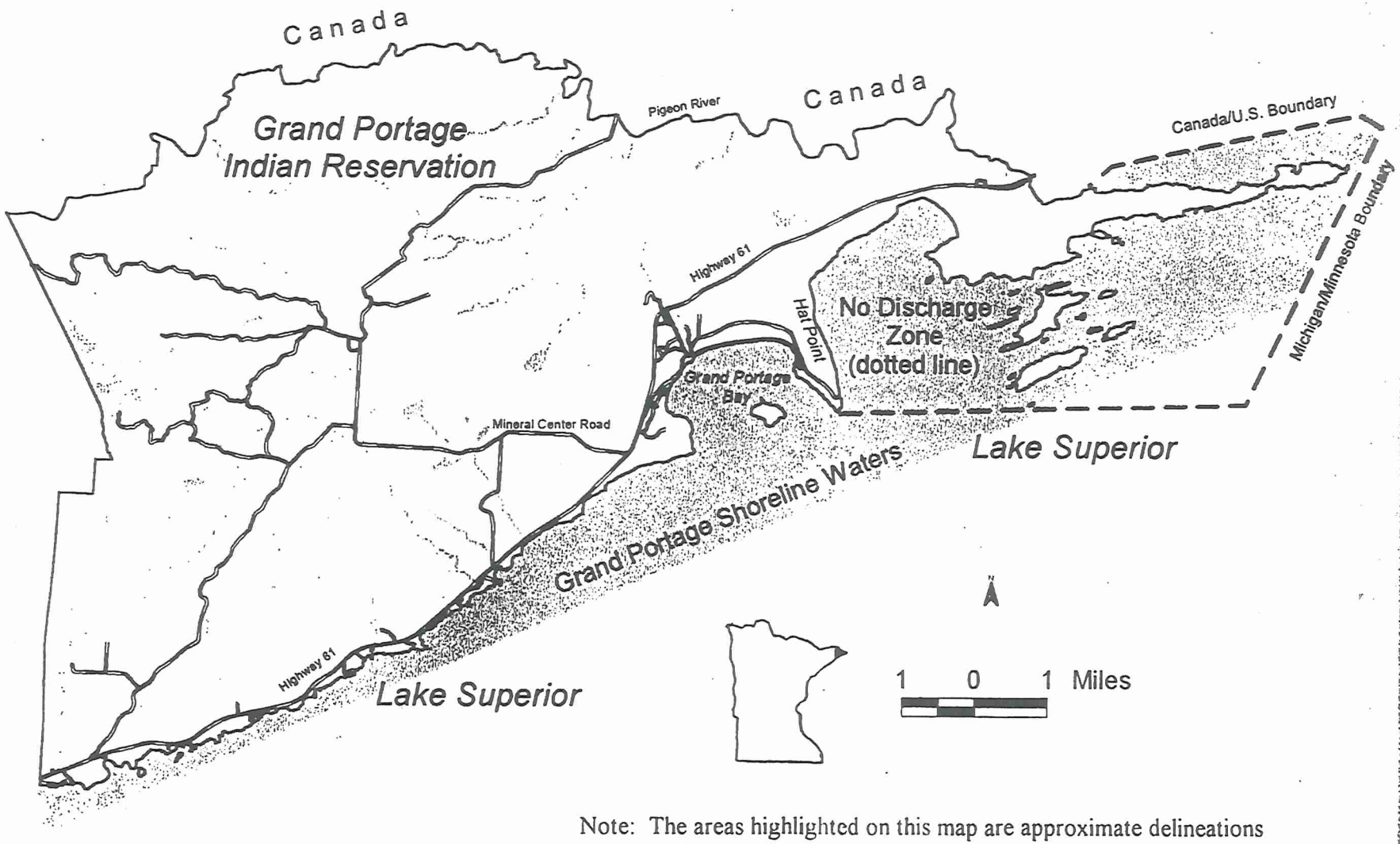
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Valdas V. Adamkus
Valdas V. Adamkus
Regional Administrator, Region 5

Date: 7/16/96

AG:24272 v1

Grand Portage Reservation
Shoreline Waters



Note: The areas highlighted on this map are approximate delineations and are not intended for legal descriptive use.

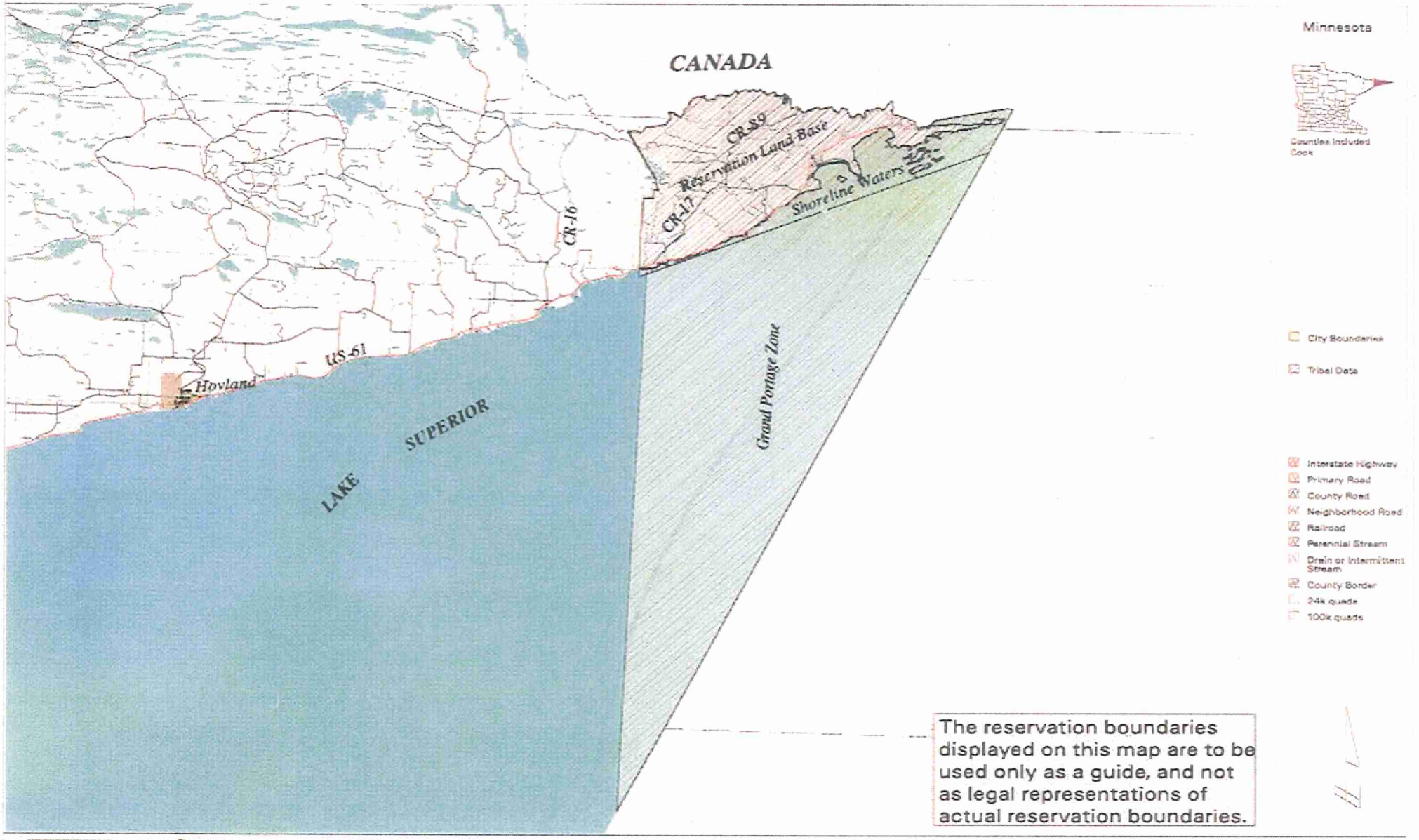
Based on 1:100K USGS DLGs

Grand Portage GIS Lab 7/10/96

Draft

Grand Portage Band Boundaries

Draft



The enclosed data themes were captured from 1:24,000 scale source materials. Digital data capture of source materials was performed using manual digitizing techniques with its inherent precision and accuracy limitations. Please understand that the map files on this tape may contain data which is out of date. The information contained in these files represents BIA digital data as of April 1995, and carries no warranty to its accuracy. Data may be updated by BIA in the future with no notification to those who have been provided these data.

0 2 4 6 8 10 12 14 16 18 20 22 24

Miles

Scale = 1: 100000

Date:November 26, 1997

Mercury in streams at Grand Portage National Monument: Evidence of ecosystem sensitivity and ecological risk

Prepared for Brandon Seitz, Grand Portage National Monument

Prepared by James G. Wiener, jwiener@uwlax.edu; voice mail 608-785-6454;
Reviewed by Roger J. Haro, Kristofer R. Rolfhus, and Mark B. Sandheinrich,
University of Wisconsin-La Crosse, River Studies Center, La Crosse,
Wisconsin; January 25, 2012

Project description. In 2008, the University of Wisconsin-La Crosse began quantifying mercury in aquatic food webs in six national park units in the western Great Lakes region, including Grand Portage National Monument (GRPO). Initial funding (2008-2009) for this project was provided by the National Park Service, Great Lakes Inventory and Monitoring Network. Intensified monitoring during 2010-2012 is supported by the Great Lakes Restoration Initiative. Principal objectives are (1) to identify parks and water bodies where concentrations of methylmercury are high enough to adversely affect fish and wildlife, and (2) to assess spatiotemporal patterns in methylmercury contamination of aquatic food webs. Methylmercury is a highly toxic compound that readily bioaccumulates in exposed organisms and can biomagnify to harmful concentrations in organisms in upper trophic levels of aquatic food webs (Scheuhammer et al. 2007, Sandheinrich and Wiener 2011, Evers et al. 2011, 2012).

Monitoring at GRPO. We sampled and analyzed water, seston (suspended particulate material, including algae), sediment, fish, and larval dragonflies from three streams that collectively span the park unit from east to west. Study sites at GRPO include Snow Creek (beaver pond in upper reaches and lower reaches), Poplar Creek (south branch), and Grand Portage Creek (lower reach). Analytical results reveal elevated concentrations of both total mercury and methylmercury in these stream systems.

High mercury levels in streamwater. Concentrations of total mercury and methylmercury in streamwater from GRPO are substantially higher than concentrations typically found in lakes and streams in the western Great Lakes region (e.g., Rolfhus et al. 2011). In 2010, for example, methylmercury in unfiltered streamwater averaged 1.5 ng/L (nanogram per liter, equivalent to parts per trillion), ranging from 0.55 to 2.3 ng/L, and total mercury averaged 7.8 ng/L (range 6.5-9.3 ng/L). For comparison, mean concentrations in unfiltered water from 17 lakes in Voyageurs National Park (Minnesota), a national park containing game fish with high concentrations of mercury, ranged from <0.04 to 0.30 ng/L for methylmercury and from 0.45 to 3.3 ng/L for total mercury (Wiener et al. 2006).

GRPO—a mercury-sensitive ecosystem. On average, methylmercury accounted for 13% of the total mercury in filtered stream water, indicating that much of the inorganic mercury in these stream systems is available for microbial conversion to

2008, Evers et al. 2012). Methylmercury in the diet of reproducing female birds is transferred rapidly to the developing egg, and the embryo is the most sensitive life stage (Scheuhammer et al. 2007, Heinz et al. 2009). Methylmercury exposure and its potential effects on reproductive success of invertivorous songbirds at GRPO has not been assessed but merits critical evaluation.

Table 1. Mean total mercury (Hg), methylmercury (MeHg), and percent methylmercury in larval dragonflies sampled from six park units during 2008-2009. Mean values were calculated from data for all species from each park unit. Sample size (n) indicates the number of dragonflies analyzed individually for both total mercury and methylmercury.

Park unit	n	MeHg (ng/g dry weight)	Total Hg (ng/g dry weight)	Percent MeHg
GRPO	59	145	151	95
INDU	16	53	66	91
ISRO	139	57	73	74
PIRO	101	63	92	73
SLBE	119	51	64	77
VOYA	117	98	119	85

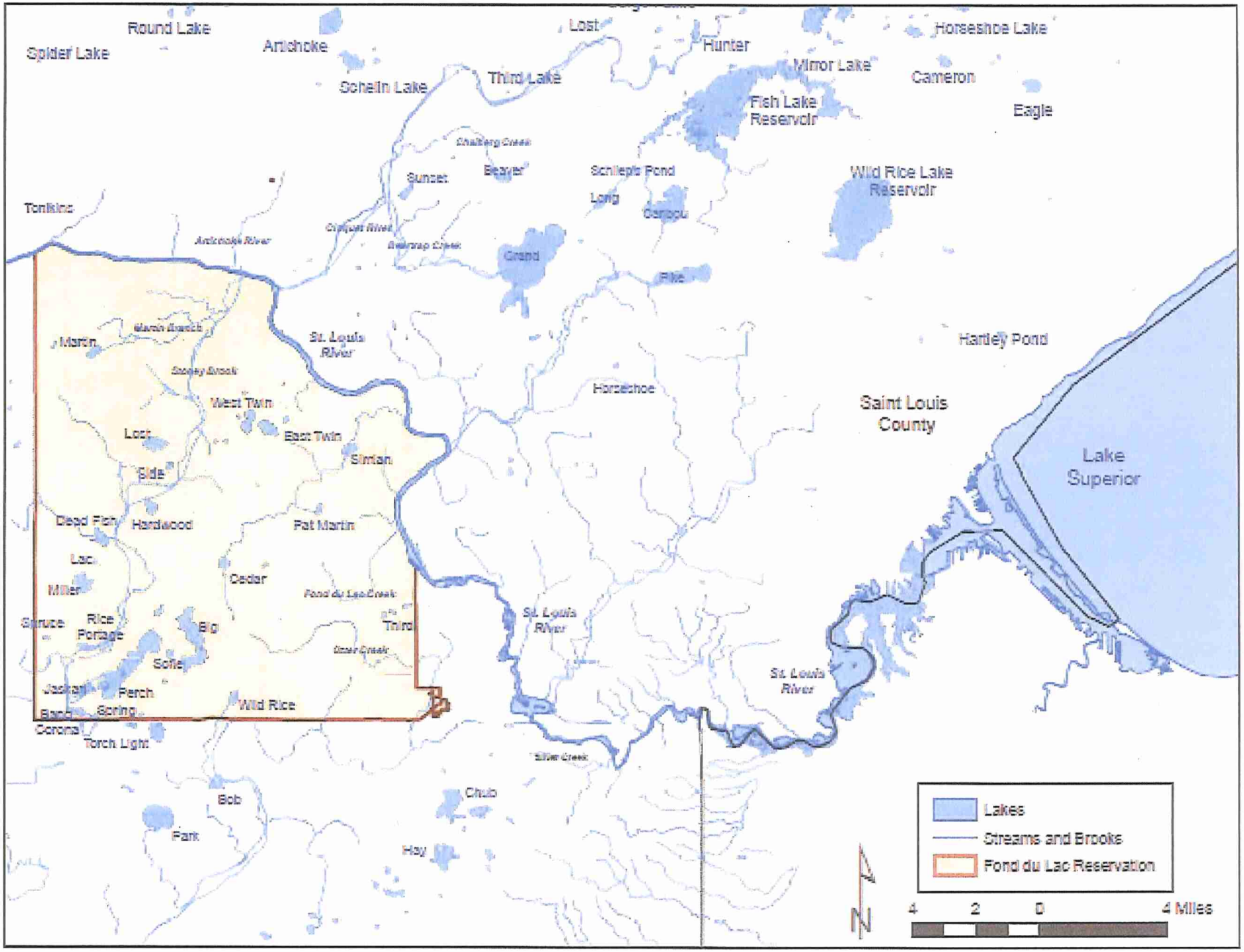
References

Brasso, R. L., and D. A. Cristol. 2008. Effects of mercury exposure on the reproductive success of tree swallows (*Tachycineta bicolor*). Ecotoxicology 17:133-141.

Cristol, D. A., R. L. Brasso, A. M. Condon, R. E. Fovargue, S. L. Friedman, K. K. Hallinger, A. P. Monroe, and A. E. White. 2008. Movement of aquatic mercury through terrestrial food webs. *Science* 320:335.

Depew, D. C., N. Basu, N. M. Burgess, L. M. Campbell, E. W. Devlin, P. E. Drevnick, C. R. Hammerschmidt, C. A. Murphy, M. B. Sandheinrich, and J. G. Wiener. *In press.* Toxicity of dietary methylmercury to fish: Derivation of ecologically meaningful threshold concentrations. Environmental Toxicology and Chemistry (accepted with minor revision, 20 January 2012).

Drevnick, P. E., D. R. Engstrom, C.T. Driscoll, E. B. Swain, S. J. Balogh, N. C. Kamman, D. T. Long, D. G. C. Muir, M. J. Parsons, K. R. Rolfhus, and R. Rossmann. 2012. Spatial and temporal patterns of mercury accumulation in lacustrine sediments across the Laurentian Great Lakes region. Environmental Pollution 161:252-260.


Round Lake
Spider Lake
Artichoke
Schelin Lake
Third Lake
Lost
Hunter
Horseshoe Lake
Mirror Lake
Cameron
Eagle
Fish Lake Reservoir
Wild Rice Lake Reservoir
Schlepis Pond
Long
Caribou
Sunset
Beaver
Tonkins
Artichoke River
Grand
Pike
Hartley Pond
St. Louis River
Horseshoe
Saint Louis County
Lake Superior
Martin
West Twin
East Twin
Loon
Side
Simian
Dead Fish
Hardwood
Pat Martin
Lac
Miller
Cedar
Spruce
Rice
Portage
Big
Third
Soils
Jackpot
Perch
Spring
Wild Rice
Bands
Corona
Torch Light
Bob
Park
Chub
Hay
Lakes
Streams and Brooks
Fond du Lac Reservation
N
4 2 0 4 Miles

Fond du Lac Environmental Program: Water Quality, Air Quality, Mercury Studies

Treatment as a State (TAS) application entails documentation of:

- Tribe is recognized by Secretary of Interior
- Governing body carrying out substantial governmental duties
- Water resources lie within reservation borders
- Capability to administer effective water quality standards program

Required public comment phase; EPA approved our application in 1996.

Reservation Business Committee (RBC) approved WQS in 1998; EPA approved in 2001.

- First triennial review completed in 2008; initiating second review this year.
- Monitoring and assessment to determine whether waters are meeting their beneficial uses.

Completed two GLNPO-funded sediment investigations, 12 reservation lakes and the St. Louis River:

- Analyzed relationships of sediment Hg, meHg and sediment characteristics (higher Hg associated with organic %); examined watershed-scale relationships

Completed two rounds of fish contaminant monitoring, in 2001-2 (working with MDH and Grand Portage), and repeated in 2008.

Collaborated with MNDNR, 1854 Treaty Authority on St. Louis River Bioassessment, including mercury in water column and fish (2005; published in 2006)

Began collecting water column samples for mercury in fall 2011; continued in spring 2012.

Partner with EPA Region 5, MPCA, WDNR on the St. Louis River Toxics TMDL Study (in progress); advocating for new data to inform the bioaccumulation model, and wet/dry deposition in the watershed.

FDL has been sampling Hg in precipitation weekly since 1999. Methyl mercury was analyzed for two years, from 2002-2004, but discontinued due to funding issues.

- Our report from John Sorensen, Time Trend in Precipitation at the FDL Reservation, shows roughly a 6% decrease in mercury wet deposition from 1999-2010 (the actual numbers ranged from 5.2%-8.7%). The exact decrease depends upon which years you examine (we changed samplers in that time period, and changed preservative, too) and whether you look at volume weighted concentration or rate standardized volume weighted concentration. The difference between these two methods was not statistically significant.
- Comparisons between FDL and other MN sites varied in John's study. Ely showed a decrease of 8.7%, Camp Ripley decreased by 1.9%, Lamberton decreased by 4%, and Marcell increased by 2.2%. Mercury decreased by an average of 3.5% for Midwest sites in the Mercury Deposition Network.

Comparison of Applicable State/Tribal Mercury Criteria

Jurisdiction	Aquatic Life Chronic Standard	Wildlife (GLI)	Human Health	Fish consumption rate
Minnesota Rules, Chapter 7052	0.91 ug/l	1.3 ng/l	0.00153 ug/l	30 g/day
Fond du Lac WQS	0.91 ug/l	1.3 ng/l	0.77 ng/l	60 g/day
Grand Portage WQS	908 ng/l	1.3 ng/l	0.196 ng/l	142.4 g/day